

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:10-HC-2076-BO

SEAN ROBERT FRANCIS,

Petitioner,

v.

TRACY JOHNS,

Respondent.


ORDER

On May 4, 2010, Sean Robert Francis, (“Francis” or “petitioner”) filed a petition for writ of habeas corpus [D.E. 1] under 28 U.S. C. § 2241 (“§ 2241”), challenging his present confinement under 18 U.S.C. § 4248 (“§ 4248”). On June 7, 2010, Tracy Johns (“Johns” or “respondent”) filed a motion to dismiss [D.E. 6] and supporting memorandum [D.E. 7].

The United States Court of Appeals for the Fourth Circuit’s recent decision in Timms v. Johns, No. 10-6496, 2010 WL 4925395 (4th. Cir. Dec. 6, 2010), held that a person against whom a § 4248 action has been initiated must exhaust all remedies within the § 4248 action prior to seeking a writ of habeas corpus under § 2241. Because the § 4248 action against petitioner in this case remains pending in this court (See United States v. Francis, No. 5:10-HC-2076-BO), petitioner has not exhausted all remedies.

Accordingly, the motion to dismiss [D.E. 6] is hereby ALLOWED, and the petition for writ of habeas corpus [D.E. 1] is hereby DISMISSED WITHOUT PREJUDICE. All other pending motions [D.E. 10, 11, and 13] are hereby DENIED AS MOOT. The Clerk is DIRECTED to CLOSE the case.

SO ORDERED. This 26 day of January 2011.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE